



OFFICE OF  
INSURANCE COMMISSIONER

November 29, 2007

Steve Hill, Chair  
Health Insurance Partnership Board  
P.O. Box 42707  
Olympia, WA 98504-2707

RE: Insurance Commissioner's Office interpretation of provisions of  
Title 48 RCW that impact the implementation of the HIP program

Dear Mr. Hill:

A number of questions have arisen regarding how the Insurance Commissioner's Office will interpret certain provisions of the state insurance code, Title 48 RCW, as they apply to the implementation and operation of the Health Insurance Partnership program established by last session's legislation – E2SHB 1569 and E2SSB 5930.

The purpose of this letter is to share the agency's perspective on certain questions that have been brought to our attention. I hope this information is helpful to the Board as it carries out its role in implementing the HIP program.

*Question 1: Must health carriers that offer health benefit plans to small groups in this state make all of their small group plans available for inclusion in the HIP program?*

It is the position of the Insurance Commissioner's Office that carriers are required by RCW 48.21.045, 48.44.023, and 48.46.066, and by the Health Insurance Portability and Accountability Act (HIPAA), to permit the HIP Board to include any or all of their small group health benefit plans in the HIP program. These statutes require carriers to offer their small group plans to all small groups on a non-discriminatory basis. Therefore, the decision as to whether a specific small group plan will be offered through the framework of the HIP program is one that can be made by the HIP Board, as provided in RCW 70.47A.110(1)(b). Carriers may not limit which of their small group plans may be included in the HIP program.

*Question 2: Must the claims experience of the persons who enroll in health benefit plans through the HIP program be combined for rate-setting purposes with the claims experience of persons who enroll in those same plans in the general small group market?*

The provisions of RCW 48.21.045(3)(i), 48.44.023(3)(i), and 48.46.066(3)(i) state explicitly that the medical experience of all persons who are covered through the HIP program must be included in the same adjusted community rate pool as the medical experience of persons who obtain their coverage outside of the HIP program. The

premium rates for plans selected by HIP program enrollees cannot be based on the medical experience of only the HIP program enrollees. RCW 70.47A.110(1)(e) states that the HIP Board shall "determine appropriate health benefit plan rating methodologies... [that] shall be based on the small group adjusted community rate as defined in Title 48 RCW." RCW 70.47A.110(1)(e) would appear to give the HIP Board some limited leeway in determining rating methodologies, as long as the Board exercises its authority under this provision in a manner consistent with the provisions of RCW 48.21.045(3), 48.44.023(3), and 48.46.066(3).

*Question 3: Can carriers collect the HIP program surcharge required by RCW 70.47A.030(2) as part of the premium paid by employers, even though the surcharge is not listed as a factor in calculating adjusted community rates pursuant to RCW 48.21.045(3), 48.44.023(3), and 48.46.066(3)?*

RCW 70.47A.030(2)(f) explicitly authorizes the Health Care Authority to collect a surcharge on all plans offered through the partnership, to be used to pay the HCA administrative expenses incurred in operating the HIP program. That authority can be exercised, even though the provisions of Title 48 addressing community rating were not directly amended to refer to the surcharge. Technical amendments to clarify the treatment of the surcharge in the calculation of the adjusted community rates under RCW 48.21.045(3), 48.44.023(3), and 48.46.066(3), would be helpful, but are not imperative.

*Question 4: Can the HIP Board impose minimum participation rules for health benefit plans that are either stricter or looser than the limits permitted by RCW 48.21.045(5), 48.44.023(5), and 48.46.066(5) – 100% participation for groups of 2 or 3; 75% participation for groups of 4 to 50?*

RCW 70.47A.110(1)(a) and 70.47A.030(2)(a) authorize the HIP Board and the HCA to adopt minimum participation rules for employees in small groups purchasing health insurance through the partnership. The limits imposed in Title 48 on minimum participation requirements are applicable to carriers and do not limit the authority of the HIP Board to adopt different limits.

*Question 5: Can the HIP Board impose minimum employer contribution requirements for small group health benefit plans offered through the HIP program?*

RCW 70.47A.110(1)(d) explicitly authorizes the HIP Board to determine whether there should be a minimum employer contribution. The small group rating statutes – RCW 48.21.045(5)(d), 48.44.023(5)(d), and 48.46.066(5)(d) – state that a carrier may not modify any requirement for a minimum employer contribution any time after a small employer has been accepted for coverage. This limitation is imposed on carriers and does not limit the authority of the HIP Board to adopt a minimum employer contribution rate for employers that purchase coverage through the HIP program. The statutes that prohibit carriers from changing employer contribution rates during a year do not conflict with the HIP Board's authority under RCW 70.47A.110(1)(d).

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I hope this information will be helpful to the members of the Board as you make decisions necessary to implement the HIP program.

Please let me know if there is anything the Insurance Commissioner's Office can do to help to ensure the successful and timely implementation of the HIP program.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kreidler", written over the word "Sincerely,".

Mike Kreidler  
Insurance Commissioner

cc: Health Insurance Partnership Board Members